

1 Lauren M. Hausman, (CA Bar No. 349514)
2 **COPYCAT LEGAL PLLC**
3 113 N San Vicente Blvd
4 Suite 232
5 Beverly Hills, CA 90211
6 T: (877) 437-6228
7 E: lauren@copycatlegal.com

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9 Attorney for Plaintiff

10 HUNTER KERHART

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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 HUNTER KERHART,

16 Civil Action No. 2:24-at-261

17 Plaintiff,

18
19 **COMPLAINT**

20 V.

21 GLASSFAB TEMPERING SERVICES
22 INC.,

23 Defendant.

24 Plaintiff Hunter Kerhart (“Plaintiff”) sues defendant GlassFab Tempering
25 Services Inc. (“Defendant”), and alleges as follows:

26
27 **THE PARTIES**

1 1. Plaintiff is an individual who is a citizen of the State of California.
2 2. Defendant is a corporation organized and existing under the laws of
3 the State of California with its principal place of business located at 1448 Mariana
4 Court, Tracy, CA 95376. Defendant's agent for service of process is Surinderpal
5 Singh Bains, 1448 Mariana Court, Tracy, CA 95376.
6

7 **JURISDICTION AND VENUE**

8 3. This Court has subject matter jurisdiction over this action pursuant to
9 28 U.S.C. §§ 1331 and 1338(a).

10 4. This Court has personal jurisdiction over Defendant because it has
11 maintained sufficient minimum contacts with California such that the exercise of
12 personal jurisdiction over it would not offend traditional notices of fair play and
13 substantial justice.

14 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)
15 because Defendant or its agents reside or may be found in this district. "The Ninth
16 Circuit has interpreted Section 1400(a) to mean that venue is proper in any
17 judicial district in which the defendant would be amenable to personal
18 jurisdiction." Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-
19 LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing
20 Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir.
21 2010)).
22
23

FACTS

I. Plaintiff's Business

6. Plaintiff is an architectural photographer specializing in high-end imagery of high-rises, interiors, and landscape architecture (see <https://hunterkerhart.com/>).

7. Plaintiff's career began in the film industry when he stumbled upon an archive of historic Los Angeles images and become obsessed with rediscovering – then later recreating – these iconic shots.

8. Plaintiff is certified by the Association of Independent Architectural Photographers (AIAP) and the Professional Aerial Photographers Association (PAPA).

II. The Work at Issue in this Lawsuit

9. In 2020, Plaintiff took a professional photograph of the Kaiser Permanente Bernard J. Tyson School of Medicine building titled “20200426_HK37097” (the “Work”). A copy of the Work is displayed below:



10. The Work was registered by Plaintiff with the Register of Copyrights
11 on April 18, 2022 and was assigned Registration No. VA 2-300-234. A true and
12 correct copy of the Certificate of Registration pertaining to the Work is attached
13 hereto as **Exhibit “A.”**

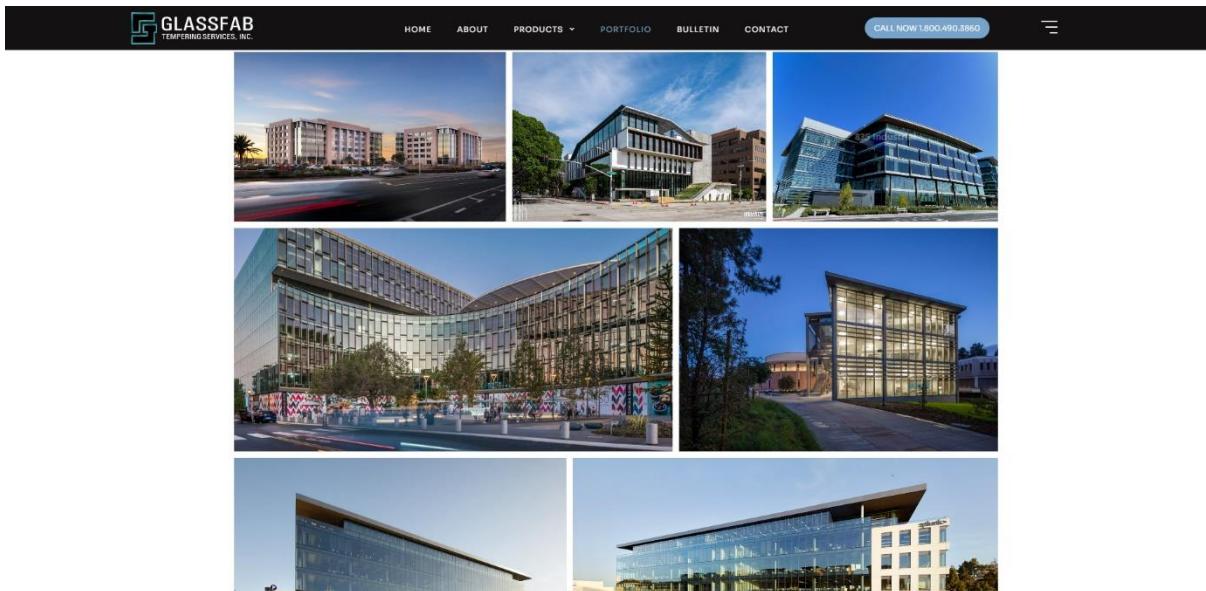
14. Plaintiff is the owner of the Work and has remained the owner at all
15 times material hereto.

16. **II. Defendant’s Unlawful Activities**

17. Defendant is a glass fabrication and glass tempering service company.

18. Defendant advertises/markets its business through its website
19. (<https://www.glassfabusa.com>) and other forms of advertising.

1 14. In January 2023 (after Plaintiff's above-referenced copyright
2 registration of the Work), Defendant displayed and/or published the Work on its
3 website, webpage, and/or social media (at <https://glassfabusa.com/portfolio/>):
4



5 13 15. A true and correct copy of screenshots of Defendant's website,
6 webpage, and/or social media, displaying the copyrighted Work, is attached
7 hereto as **Exhibit "B."**
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13 16. Defendant is not and has never been licensed to use or display the
14 Work. Defendant never contacted Plaintiff to seek permission to use the Work in
15 connection with Defendant's website, webpage, social media, or for any other
16 purpose.
17

18 17. Defendant utilized the Work for commercial use.
19
20

21 18. Upon information and belief, Defendant located a copy of the Work
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23

1 on the internet and, rather than contact Plaintiff to secure a license, simply copied
2 the Work for its own commercial use.

3 19. Through his ongoing diligent efforts to identify unauthorized use of
4 its photographs, Plaintiff first discovered Defendant's unauthorized use/display
5 of the Work in April 2023. Following Plaintiff's discovery, Plaintiff notified
6 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable
7 to negotiate a reasonable license for the past infringement of the Work.
8

9 20. All conditions precedent to this action have been performed or have
10 been waived.
11

COUNT I – COPYRIGHT INFRINGEMENT

13 21. Plaintiff re-alleges and incorporates paragraphs 1 through 20 as set
14 forth above.

15 22. Each photograph comprising the Work is an original work of
16 authorship, embodying copyrightable subject matter, that is subject to the full
17 protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).
18

19 23. Plaintiff owns a valid copyright in each photograph comprising the
20 Work, having registered the Work with the Register of Copyrights.

21 24. As a result of Plaintiff's reproduction, distribution, and public display
22 of the Work, Defendant had access to the Work prior to its own reproduction,
23 distribution, and public display of the Work on its website, webpage, and/or social
24

1 media.

2 25. Defendant reproduced, distributed, and publicly displayed the Work
3 without authorization from Plaintiff.

4 26. By its actions, Defendant infringed and violated Plaintiff's exclusive
5 rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing,
6 distributing, and publicly displaying the Work for its own commercial purposes.

7 27. Defendant's infringement was willful as it acted with actual
8 knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's
9 copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website
10 ("Copyright © 2023 GlassFab"), indicating that Defendant understands the
11 importance of copyright protection and intellectual property rights and is actually
12 representing that it owns each of the photographs published on its website. See,
13 e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018
14 U.S. Dist. LEXIS 127717, at *3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of
15 ROI's infringement is evidenced by the fact that at the bottom of the webpage on
16 which the Indianapolis photograph was unlawfully published appeared the
17 following: 'Copyright © 2017.' By placing a copyright mark at the bottom of its
18 webpage that contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell
19

1 asserts ROI willfully infringed his copyright by claiming that it owned the
2 copyright to everything on the webpage.”); John Perez Graphics & Design, LLC
3 v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist.
4 LEXIS 61928, at *12-13 (N.D. Tex. May 1, 2013) (“Once on Defendant’s
5 website, Defendant asserted ownership of Plaintiff’s Registered Work by
6 including a copyright notice at the bottom of the page. Based on these allegations,
7 the Court finds Plaintiff has sufficiently pled a willful violation....”). Defendant
8 clearly understands that professional photography such as the Work is generally
9 paid for and cannot simply be copied from the internet.
10
11

13 28. Plaintiff has been damaged as a direct and proximate result of
14 Defendant’s infringement.
15
16

29. Plaintiff is entitled to recover his actual damages resulting from
30 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to
31 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a
32 disgorgement of Defendant’s profits from infringement of the Work, which
33 amounts shall be proven at trial.
34

35 30. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to
36 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed
37 proper by the Court.
38

1 31. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover his
2 costs and attorneys' fees as a result of Defendant's conduct.

3 32. Defendant's conduct has caused, and any continued infringing
4 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
5 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
6 Plaintiff is entitled to a permanent injunction prohibiting infringement of
7 Plaintiff's exclusive rights under copyright law.

8 **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

9 a. A declaration that Defendant has infringed Plaintiff's copyrights in the
10 Work;

11 b. A declaration that such infringement is willful;

12 c. An award of actual damages and disgorgement of profits as the Court deems
13 proper or, at Plaintiff's election, an award of statutory damages for willful
14 infringement up to \$150,000.00 for each photograph comprising the Work;

15 d. Awarding Plaintiff his costs and reasonable attorneys' fees pursuant to 17
16 U.S.C. § 505;

17 e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
18 amounts;

19 f. Permanently enjoining Defendant, its employees, agents, officers, directors,
20 attorneys, successors, affiliates, subsidiaries and assigns, and all those in
21 24

1 active concert and participation with Defendant, from directly or indirectly
2 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,
3 reproduce, or otherwise market any works derived or copied from the Work
4 or to participate or assist in any such activity; and
5

6 g. For such other relief as the Court deems just and proper.

7 **Demand For Jury Trial**

8 Plaintiff demands a trial by jury on all issued so triable.

9
10
11 DATED: March 4, 2024.

COPYCAT LEGAL PLLC

12 By: /s/ Lauren M. Hausman
13 Lauren M. Hausman, Esq.
14 Attorney for Plaintiff
15 Hunter Kerhart